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Criminal accountability of United Nations officials and experts on mission

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Report of the Secretary-General

Summary

The present report has been prepared pursuant to paragraph 29 of General Assembly resolution 72/112. Section II contains information on the policies and procedures of the United Nations Secretariat, funds and programmes regarding credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission. Section III addresses the relevant policies and procedures of the specialized agencies and related organizations, including coordination mechanisms. Section IV contains a recommendation to help to ensure that such policies and procedures are coherent, systematic and coordinated throughout the United Nations system.

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I. Introduction

1. In its resolution 72/112, the General Assembly requested the Secretary-General to submit and keep updated a report setting out all relevant existing United Nations policies and procedures of the United Nations system regarding the allegations referred to in paragraphs 18 and 19 of the resolution. Those paragraphs refer to: (a) credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission and are brought to the attention of the States against whose nationals such allegations are made; and (b) information with respect to investigations or prosecutions of crimes allegedly committed by United Nations officials or experts on mission of which States notified the United Nations. The Assembly also requested the Secretary-General to submit recommendations on coherence and coordination throughout the United Nations system. The present report complements the report of the Secretary-General submitted to the Assembly at its seventy-second session pursuant to its resolution 71/134 (A/72/121).

2. By a letter dated 13 December 2017, the Secretary-General drew the attention of the relevant units of the United Nations Secretariat, funds and programmes, as well as specialized agencies and related organizations, to General Assembly resolution 72/112 and requested them to submit relevant information and recommendations.

3. The present report contains a summary of information received relating to policies and procedures regarding credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission pursuant to the request for information sent in 2016, as set out in document A/72/121, and the request for information sent in 2017. The report is to be read in conjunction with other relevant reports.[1]

4. The United Nations system is composed of the United Nations Secretariat and a number of affiliated funds and programmes, as well as specialized agencies and related organizations. While the United Nations Secretariat, funds and programmes are under the authority of the Secretary-General, the specialized agencies and related organizations are independent international organizations. Coordination and cooperation between the entities of the United Nations system takes place through the United Nations System Chief Executives Board for Coordination (CEB), which meets twice a year and is chaired by the Secretary-General.[2] CEB comprises 31 executive heads of the United Nations and its funds and programmes, the specialized agencies and related organizations.

5. While the relevant policies and procedures of the different entities of the United Nations system may vary, they are informed by a common framework. This framework is based on the standards of conduct for the international civil service, which were prepared by the International Civil Service Advisory Board in 1954. In its resolution 67/257, the General Assembly approved the revised standards of conduct for the international civil service with effect from 1 January 2013 (A/67/30 and A/67/30/Corr.1, annex IV). Moreover, the relevant policies and procedures of entities that are members of CEB may provide for institutional cooperation.

6. Section II of the present report contains information on the relevant policies and procedures of the United Nations Secretariat, funds and programmes. Section III addresses the relevant policies and procedures of specialized agencies and related organizations, including coordination mechanisms between the different entities of the United Nations system. Section IV contains a recommendation to help to ensure

[1] See, in particular, A/73/71 and the other reports issued under this agenda item (A/73/128 and A/73/129).

[2] See http://www.unsystem.org/content/ceb.

that such policies and procedures are coherent, systematic and coordinated throughout the United Nations system.

II. Policies and procedures of the United Nations Secretariat, funds and programmes

7. The standards of conduct and integrity required of all categories of personnel, while contained in different texts applicable to each category, are similar, since they derive from principles established in Article 101, paragraph 3, of the Charter of the United Nations, which requires the highest standards of integrity of United Nations staff members.

8. United Nations staff members are governed by the standards of conduct set out in the Staff Regulations and Rules of the United Nations (ST/SGB/2018/1) and other administrative issuances. Staff members are bound to respect those standards of conduct through the signing of their letter of appointment. The Staff Regulations embody the fundamental conditions of service and the basic rights, duties and obligations of the Secretariat.

9. In field missions, individual military and police personnel and members of formed police units, as well as some other government-provided personnel, are deployed with the status of experts on mission. Experts on mission are required to sign an undertaking upon commencement of service with the Organization through which they agree to be bound by the provisions contained in the undertaking, including the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission (ST/SGB/2002/9) and such other documents adopted by the United Nations that regulate the conduct of experts on mission.[3]

10. For United Nations Volunteers, the standards of conduct are contained in their conditions of service, which form part of the offer letter issued by the United Nations Volunteers programme to all volunteers and through which all volunteers are bound.[4] For individual United Nations consultants and contractors, agreements signed between them and the United Nations contain provisions on the obligation to respect the United Nations standards of conduct.[5]

11. In addition to the Staff Regulations and Rules, the policies and procedures discussed in the following sections include the Secretary-General's bulletins on status, basic rights and duties of United Nations staff members (ST/SGB/2016/9), on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) and on protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations (ST/SGB/2017/2/Rev.1); administrative instruction ST/AI/2017/1 on unsatisfactory conduct, investigations and the disciplinary process, which replaces ST/AI/371 and ST/AI/371/Amend.1, on revised disciplinary measures and procedures, for all disciplinary proceedings initiated after 26 October 2017; and information circular ST/IC/2016/25 on the Anti-Fraud and Anti-Corruption Framework of the United Nations Secretariat.

12. Specialized policies and instruments for specific categories of personnel include the Department of Political Affairs/Department of Peacekeeping Operations/ Department of Field Support policy on accountability for conduct and discipline in field missions, memorandums of understanding between the United Nations and

[3] See Department of Political Affairs/Department of Peacekeeping Operations/Department of Field Support policy on accountability for conduct and discipline in field missions, paras. 11.2 and 11.5.

[4] Ibid., para. 11.4.

[5] Ibid., para. 11.7.

troop- and police-contributing countries, Department of Peacekeeping Operations directives for disciplinary matters involving civilian police officers and military observers, the code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal (General Assembly resolution 66/106, annex) and the mechanism for addressing complaints regarding alleged misconduct or incapacity of the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal (General Assembly resolution 70/112, annex).

13. As subsidiary organs of the General Assembly, the funds and programmes are subject to the authority of the Secretary-General and apply the Staff Regulations and Rules. Funds and programmes are required to implement the regulations, rules, policies and procedures of the United Nations concerning cases of alleged misconduct, including alleged criminal behaviour of United Nations staff members or experts on mission. In some instances, funds and programmes take specific action in adopting their own policies and procedures regarding possible criminal conduct by United Nations officials and experts on mission. Such policies and procedures will be referred to where appropriate.[6]

14. The sections below are based on information received from United Nations Secretariat units, the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the United Nations Joint Staff Pension Fund, the United Nations Human Settlements Programme (UN-Habitat), the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the United Nations Office for Project Services (UNOPS), the International Residual Mechanism for Criminal Tribunals and the United Nations University. Where necessary, the information received was updated on the basis of recent changes in relevant policies and procedures.

15. The relevant policies and procedures cover reporting unsatisfactory conduct (sect. II.A), investigation of unsatisfactory conduct (sect. II.B), protection against retaliation (sect. II.C), administrative and disciplinary measures taken by the Secretary-General (sect. II.D) and referrals to Member States (sect. II.E).

A. Reporting unsatisfactory conduct

16. Pursuant to rule 1.2 (c) of the Staff Rules, staff members have the duty to report any breach of the Organization's regulations and rules to the officials whose responsibility it is to take appropriate action and to cooperate with duly authorized audits and investigations. Failure to report may constitute an act of unsatisfactory conduct or misconduct itself.

17. Unsatisfactory conduct is defined as any conduct where a staff member fails to comply with the staff member's obligations under the Charter of the United Nations, the Staff Regulations and Rules of the United Nations or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant. Unsatisfactory conduct includes conduct of sufficient gravity that rises to the level of misconduct (see ST/AI/2017/1, para. 3.1).

18. The overall responsibility to assist the Secretary-General (and, by extension, programme managers) in fulfilling oversight responsibilities in respect of resources of the Organization lies with the Office of Internal Oversight Services (OIOS), which deals primarily with the possible misconduct on mission of civilian and uniformed officials and experts of the United Nations Secretariat, peacekeeping operations and

[6] For an overview of the relevant policies and procedures, see also A/72/121.

special political missions. Information about unsatisfactory conduct may be brought to the attention of: (a) the responsible official, with a copy to OIOS; or (b) OIOS. If such information is provided anonymously, it must be brought to the attention of OIOS (ibid., para. 4.3).

19. Unsatisfactory conduct may be reported in different ways, depending on whether the conduct takes place at a main office, in the field or in one of the funds or programmes. OIOS offers an online reporting tool, whereby anyone with information regarding possible wrongdoing where it involves United Nations property, assets, personnel, vendors or implementing partners is strongly encouraged to report the matter to the Investigations Division of OIOS.[7] In field missions, the reporting avenues may vary depending on the mission, but reports of possible misconduct can generally be made to a secure email address, a telephone hotline or a locked complaint box, or in person to the Conduct and Discipline Team or other mission entities which will then refer the matter to the Conduct and Discipline Team. Anyone can also report unsatisfactory conduct by United Nations personnel directly to OIOS or to the Conduct and Discipline Unit of the Department of Field Support in New York.

20. A number of the funds and programmes, such as UNEP and UN-Women, also address suspected unsatisfactory conduct through OIOS. Several funds and programmes have their own investigative units that provide for the possibility of reporting unsatisfactory conduct. Such investigative units include the UNDP Office of Audit and Investigations, the Office of Internal Audit and Investigations of the United Nations Children's Fund (UNICEF), the UNHCR Inspector General's Office, the Office of the Inspector General of the World Food Programme (WFP), the Office of Audit and Investigation Services and the investigations hotline of the United Nations Population Fund (UNFPA) and the UNOPS Internal Audit and Investigations Group. The role of those investigative units is specified in the rules and policies of the respective fund or programme. For example, chapter I, section 4, of the UNDP legal framework for addressing non-compliance with United Nations standards of conduct of March 2018 provides that in reporting allegations of wrongdoing, staff members may make such a report either to the Office of Audit and Investigations or to their immediate supervisor or other appropriate supervisor within the operating unit.[8]

B. Investigation of unsatisfactory conduct

21. Investigations into suspected unsatisfactory conduct involving United Nations staff members, experts on mission and United Nations Volunteers are conducted under the primary responsibility of the United Nations, in accordance with procedures set out in various administrative issuances, and for contractors in accordance with the terms and conditions of their contract.[9] When the United Nations conducts an administrative investigation, the evidence collected may be used to support the disciplinary process and, in cases where the misconduct could amount to criminal conduct, the evidence may be used to support national criminal proceedings.

22. Section 6 of administrative instruction ST/AI/2017/1 contains minimum standards for the conduct of investigations. Pursuant to staff regulation 1.2 (r) and staff rule 1.2 (c), staff members are required to fully cooperate with all duly

[7] OIOS, "Reporting wrongdoing", online reporting tool. Available at https://oios.un.org/page?slug=reporting-wrongdoing.

[8] See UNDP, "Legal framework for addressing non-compliance with United Nations standards of conduct", March 2018, para. 27.

[9] See ST/AI/2013/4 and OIOS, "Investigations manual", January 2015, sect. 5.2.4 (p. 58).

authorized investigations. Failure to cooperate may be considered unsatisfactory conduct that may amount to misconduct.

23. The Investigations Division of OIOS investigates, with assurances of confidentiality, reports of suspected unsatisfactory conduct, which may amount to misconduct, and makes recommendations for appropriate action to ensure accountability. Investigations are conducted in accordance with policies and procedures set out in the OIOS Investigations Manual. The aim of OIOS investigations is to establish facts and make recommendations in the light of the Office's findings.

24. OIOS transmits the results of its investigations, through an investigation report, to the designated programme manager of the implicated staff member or expert on mission, together with appropriate recommendations to guide the Secretary-General in deciding on administrative and disciplinary action. The Secretary-General or designated programme manager, as appropriate, has the responsibility to consider what action, if any, is to be taken after receipt of the investigation report.

25. OIOS recommendations may include: (a) appropriate action to be taken, including disciplinary or administrative measures; (b) consideration of referral to national authorities, including under General Assembly resolution 62/63; and (c) requesting financial recovery. OIOS is not a law enforcement agency, and does not have subpoena or other coercive statutory powers; however, in cases of possible criminality, OIOS recommends that the subject's substantive office consider, in consultation with the Office of Legal Affairs, referral to national law enforcement authorities (see sect. II.E below).

26. In the case of the funds and programmes, the respective investigative or oversight units typically conduct investigations. For UNDP, the Office of Audit and Investigations has the mandate to investigate all reports of alleged wrongdoing involving UNDP staff members and allegations of fraud and corruption against UNDP, whether committed by UNDP staff members or other persons, parties or entities.[10] On the basis of the evidence collected, the Office decides whether to proceed with a further investigation. The Director of the Office may refer the matter to designated persons, depending on the nature of the allegations and the complexity of the case. The subject of the investigation must be interviewed during the investigation, and the investigators prepare an investigation report giving a full account of the relevant facts and attaching any documentary evidence.

27. In the case of UNHCR, the Inspector General's Office has the mandate to undertake investigations of possible misconduct by UNHCR personnel. The Inspector General's Office is responsible for ensuring that possible misconduct involving any person having a direct contractual link with UNHCR, including staff members, consultants, interns and persons deployed to UNHCR offices and headquarters units, as well as to UNHCR-funded projects under agreements with third parties, is properly investigated. Given the large scope of third party investigative responsibilities, priority is given to serious allegations concerning sexual exploitation and abuse, serious fraud and criminal behaviour that could most severely affect the reputation of UNHCR.

28. In UNOPS, the Internal Audit and Investigations Group investigates allegations of misconduct (such as fraud, corruption and sexual harassment, as well as less serious matters) that involve UNOPS personnel. If the Group finds evidence showing that misconduct occurred, disciplinary proceedings are instituted. At the end of the disciplinary proceedings, if the Executive Director concludes that misconduct occurred, disciplinary measures are imposed on the relevant personnel. In the interests

[10] See UNDP, "Legal framework", chap. II (Investigation).

of transparency, the Executive Director may inform the UNOPS governing body, the Executive Board of the United Nations Development Programme, the United Nations Populations Fund and the United Nations Office for Project Services, of disciplinary decisions taken in the course of the preceding year and publish an annual report of cases of misconduct that have resulted in the imposition of disciplinary measures.[11]

C. Protection against retaliation

29. Misconduct is regulated by Secretary-General's bulletin ST/SGB/2017/2/Rev.1. Under the previous Secretary-General's bulletin (ST/SGB/2005/21), staff members were protected against retaliation for reporting misconduct by staff members. ST/SGB/2017/2/Rev.1 expands the scope of application of the policy by including protection against retaliation for staff members (regardless of the type of appointment or its duration), interns, United Nations Volunteers, individual contractors and consultants.

30. Under ST/SGB/2017/2/Rev.1, protected activity includes: (a) reporting "the failure of one or more staff members to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, the Financial Regulations and Rules, or the Standards of Conduct of the International Civil Service"; and (b) cooperating in good faith with a duly authorized investigation or audit. With respect to (a), in order to receive protection, the report should be made as soon as possible and no later than six years after the individual becomes aware of the misconduct. Reports of retaliation are to be submitted to the Ethics Office.[12] As a preventive measure, OIOS informs the Ethics Office of any report of wrongdoing that OIOS identifies as posing a retaliation risk, provided that the individual concerned consents to such information being provided.

31. Upon receipt of a report of retaliation, the Ethics Office conducts a preliminary review of the complaint in order to determine whether: (a) the complainant engaged in a protected activity; and (b) there is a prima facie case that the protected activity was a contributing factor in causing the alleged retaliation or threat of retaliation (see ST/SGB/2017/2/Rev.1, para. 7.1). Having completed the preliminary review of a complaint, the Ethics Office may determine that: (a) there is a prima facie case of retaliation or threat of retaliation, in which case the matter is referred to OIOS for investigation; or (b) the matter does not raise a prima facie case of retaliation or threat of retaliation, in which case the complainant is informed accordingly. Pending the completion of the investigation by OIOS, the Ethics Office may recommend that the Secretary-General take appropriate measures to safeguard the interests of the complainant.

32. Once the investigation has been completed, the Ethics Office conducts an independent review of the findings of the report and supporting documents to determine whether there is clear and convincing evidence that the alleged retaliatory action would have been taken absent the protected activity or that the alleged retaliatory action was not made for the purpose of punishing, intimidating or injuring the complainant. If the standard of proof is not met, the Ethics Office considers that retaliation has occurred and recommends appropriate measures to correct the negative consequences and protect the complainant from further retaliation. If the standard of proof is met, the Ethics Office informs the complainant in writing and makes its recommendations to the head of department or office concerned.

[11] The annual report does not contain the names of any individuals.

[12] On reporting unsatisfactory conduct generally, see sect. II.A above.

33. Preliminary determinations made by the Ethics Office may be reviewed by the alternate Chair of the Ethics Panel of the United Nations. Administrative decisions taken on the basis of recommendations of the Ethics Office may constitute contestable administrative decisions under chapter XI of the Staff Rules.

34. Some of the funds and programmes, such as UNHCR,[13] UNDP,[14] WFP,[15] UNICEF,[16] UNFPA[17] and UNOPS,[18] have their own policies against retaliation, which were typically adopted to implement ST/SGB/2005/21 and ST/SGB/2017/2/Rev.1. In the case that the person covered by the respective policy fears retribution or retaliation after reporting, the person may address the concern by filing a report to the ethics office of the fund or programme. As in the case of the Ethics Office of the Secretariat, the ethics office of the respective fund or programme will conduct a preliminary review of whether a credible case of retaliation exists. The matter will then be referred to the relevant internal oversight office for further investigation.

D. Administrative and disciplinary measures

35. Disciplinary measures against United Nations staff members are set out in chapter X of the Staff Regulations and Rules of the United Nations. Staff regulation 10.1 (a) provides that the Secretary-General may impose disciplinary measures on staff members who engage in misconduct.

36. Sections 7–9 of administrative instruction ST/AI/2017/1 contain a step-by-step summary of how matters are dealt with following the completion of an investigation, including details about the disciplinary process. If the Assistant Secretary-General for Human Resources Management decides to initiate a disciplinary process, the staff member shall be notified in writing of the allegations and informed of the right to comment on such allegations and to seek the assistance of counsel through the Office of Staff Legal Assistance or from outside. The staff member is given a reasonable opportunity to respond to the allegations of misconduct. Taking into account the staff member's comments, the Assistant Secretary-General decides whether to close the case, with or without administrative action, or to recommend the imposition of one or more disciplinary measures. In the latter case, the Under-Secretary-General for Management decides whether to impose one or more of the disciplinary measures provided for in staff rule 10.2 (a). The Under-Secretary-General for Management may also decide to impose one or more administrative measures. In some cases, the first step taken with respect to a matter referred to the Office of Human Resources Management is not to initiate a disciplinary process, but rather to request the staff member to provide comments. The request for comment is made in compliance with staff rule 10.2 (c) if the issuance of a reprimand is being contemplated and to assist the Office in deciding whether to initiate a disciplinary process.

37. Staff rule 10.2 sets out the different disciplinary measures. Staff rule 10.4 (a) provides that, at any time after a report of possible misconduct, pending an investigation and the completion of the disciplinary process, a staff member may be placed on administrative leave by the appropriate official.

38. With regard to the funds and programmes, UNDP has the responsibility of taking disciplinary action with regard to its own staff members, as well as to other entities,

[13] UNHCR, document IOM/043/2008–FOM/045/2008.
[14] UNDP, "Policy for protection against retaliation", April 2018.
[15] WFP, document ED2008/003.
[16] UNICEF, document CF/EXD/2007-005, revision 2.
[17] UNFPA, "Policy for protection against retaliation for reporting misconduct or for cooperating with an authorized fact-finding activity", 25 November 2014.
[18] UNOPS, document OD.ETHICS.2018.01.

such as UN-Women and the United Nations Capital Development Fund, to whom the UNDP legal framework applies, as well as United Nations Volunteers.[19] The UNDP legal framework provides that if all of the facts indicate that misconduct has occurred, the staff member receives a charge letter with the appropriate disciplinary measures.[20] If the Director of the Legal Office in the Bureau for Management Services considers that the allegations of wrongdoing are not substantiated, the Director will recommend that the staff member be cleared of the allegations and that the matter be closed.[21]

39. All staff members may file a complaint against administrative and disciplinary measures in the informal or formal system of administration of justice at the United Nations in accordance with chapter XI of the Staff Rules.

E. Referrals to Member States

40. Acts of misconduct may constitute crimes under national laws of the host State, the State of nationality of the alleged subject or the contributing State. In such instances, in addition to taking any disciplinary measure, the United Nations may request that Member States take steps to investigate and prosecute United Nations staff members and experts on mission for the alleged commission of such crimes. The responsibility for criminal accountability rests with Member States under whose jurisdiction any misconduct that constitutes a crime shall be investigated and possibly prosecuted.

41. Under current practice, and pursuant to General Assembly resolution 62/63 on criminal accountability of United Nations officials and experts on mission, as well as subsequent resolutions on the same topic, the Secretariat, as well as the separately administered United Nations funds and programmes, forwards relevant investigation findings to the Office of Legal Affairs for review (see General Assembly resolution 72/112, para. 18). The Office reviews the findings, along with any associated evidentiary materials if deemed necessary, and consults with the substantive entities, as needed, to determine whether there exist credible allegations that a crime may have been committed. The Office also consults on any redactions made to documents to be disclosed. Where credible allegations that a crime may have been committed by United Nations officials or experts on mission exist, they are referred to the Member State against whose nationals such allegations are made, through that State's permanent mission to the United Nations, for appropriate action, including possible prosecution. The Office follows up on the status of those referrals at regular intervals.

42. Pursuant to paragraph 19 of resolution 72/112, the reporting obligations of the Secretary-General have been expanded to include cases where the Organization has been notified by Member States of national investigations or prosecutions of United Nations officials and experts on mission. Under current practice, the Office of Legal Affairs liaises with all Secretariat units, as well as the separately administered funds and programmes, to compile information regarding cases where such notifications have been received. Member States are consulted for updates on the status of such cases and are requested to confirm that the inclusion of information regarding the cases in the report of the Secretary-General would not prejudice national investigations and proceedings concerned, in accordance with paragraph 19 of the resolution.

43. Funds and programmes generally do not directly refer credible allegations that a crime may have been committed by United Nations officials or experts on mission to the permanent mission to the United Nations of the State or States of nationality

[19] UNDP, "Legal framework", para. 5 (a).
[20] Ibid., para. 78.
[21] Ibid., para. 82 (a).

concerned. Rather, they forward investigation reports revealing that criminal conduct may have been committed to the Office of Legal Affairs. Even when funds and programmes directly contact Member States, they report the relevant cases to the Office.

44. Funds and programmes also liaise with the Office of Legal Affairs when matters pertaining to the privileges and immunities of the Organization are concerned.

III. Policies and procedures of specialized agencies and related organizations

45. While specialized agencies and related organizations are part of the United Nations system, they are not subject to the authority of the Secretary-General. Specialized agencies and related organizations, unlike the United Nations funds and programmes, are legally independent international organizations with their own rules, membership, organs and financial resources. Specialized agencies may or may not have been established by the United Nations. Pursuant to Articles 57 and 63 of the Charter of the United Nations, those agencies join the United Nations system through agreements concluded with the Economic and Social Council and approved by the General Assembly. Related organizations become part of the United Nations system through relationship agreements or other arrangements. As noted above, coordination and cooperation between all entities of the United Nations system takes place through CEB.

46. For the purposes of the present report, information on policies and procedures relating to the criminal accountability of their officials and experts on mission was received from 10 specialized agencies and 1 related organization: the Food and Agriculture Organization of the United Nations (FAO), the International Fund for Agricultural Development (IFAD), the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), the United Nations Industrial Development Organization (UNIDO), the World Tourism Organization (UNWTO), the World Bank, the World Health Organization (WHO), the World Intellectual Property Organization (WIPO), the World Meteorological Organization (WMO) and the International Atomic Energy Agency (IAEA).

A. Food and Agriculture Organization of the United Nations

47. FAO refers allegations of sexual exploitation and abuse committed by its officials and experts on mission to national authorities for criminal prosecution in accordance with administrative circular 2013/27, which in turn refers to the Secretary-General's bulletin on special measures for protection from sexual exploitation and abuse (ST/SGB/2003/13). Moreover, FAO may act under its policy against fraud and other corrupt practices (administrative circular 2015/08), which provides that evidence of fraud or other corrupt practices obtained by FAO "may be referred to national authorities for their consideration of criminal prosecution of those involved, civil recovery orders or other action".

48. Before referring any allegations to a national authority, the allegations in question are brought to the attention of the Office of the Inspector General, which is responsible for providing oversight of the programmes and operations of FAO through internal audit, investigation and inspection. In line with the Charter for the Office of the Inspector General, the Office reviews the allegations and, if found to be substantiated, completes its investigation and submits a strictly confidential report to the Director General. It is then the responsibility of the Legal Office to advise, in the light of the findings and conclusions of the Office of the Inspector General, as to

whether a referral to national authorities is deemed appropriate in the circumstances. If so, the Legal Office provides advice on the manner and timing of exchanges with national authorities, and also advises the Director General if such exchanges entail considerations of FAO privileges and immunities.

B. International Fund for Agricultural Development

49. The principles underpinning IFAD investigative, disciplinary and sanctions processes are captured in the IFAD investigation and sanction processes, according to which the Office of Audit and Oversight has the responsibility and sole mandate in IFAD to investigate possible instances of irregular practices in IFAD activities and operations.

50. The IFAD policy on preventing fraud and corruption in its activities and operations covers all activities financed and/or managed by IFAD and applies to IFAD staff and all individuals or entities implementing such activities or representing IFAD in any capacity. In accordance with the policy, IFAD applies a zero-tolerance policy in cases where it has determined through an investigative process that: (a) its staff, consultants or individuals acting as representatives of IFAD have engaged in fraudulent, corrupt, collusive or coercive practices;[22] and (b) fraudulent, corrupt, collusive or coercive actions have occurred in projects financed through its loans and grants.[23]

51. Upon completion of the investigation, the Office of Audit and Oversight transmits its investigative findings to the IFAD Sanctions Committee, which reviews them and acts: (a) as a decisional body on the appropriate sanction to impose on firms, private entities and individuals, including consultants, which may recommend to the President of IFAD that the matter be referred to national authorities, especially if potential violations of national criminal laws are involved; and (b) as an advisory body to the President on the appropriate sanction or measure to impose on IFAD staff members. In the latter case, the Sanctions Committee presents its recommendations to the President of IFAD, which may include that the matter be referred to national authorities, especially if potential violations of national criminal laws are involved. The President takes the final decision on the basis of the Committee's recommendations and applicable IFAD rules and regulations.

C. International Civil Aviation Organization

52. Relevant ICAO policies include the ICAO Service Code, the ICAO staff rules and regulations, the ICAO framework on ethics, the ICAO anti-fraud and anti-corruption policy, the Convention on the Privileges and Immunities of the Specialized Agencies of 1947, and annex III to the Convention ("International Civil Aviation Organization") of 1948.

53. The current ICAO regulatory framework provides for the reporting of unlawful misconduct committed by ICAO officials or experts on mission to the Secretary-General of ICAO or to the organization's Ethics Officer. ICAO may also rely on information from other sources bearing on the conduct of an ICAO staff member.

54. Pursuant to ICAO staff rule 101.19, a staff member who has been arrested, charged with an offence other than a minor traffic violation or summoned before a court as a defendant in a criminal proceeding, or who has been convicted, fined or imprisoned for any offence other than a minor traffic violation, shall immediately

[22] IFAD, "Policy on preventing fraud and corruption in its activities and operations", 12 December 2005, para. 12.

[23] Ibid., para. 7.

report the fact to the Secretary-General of ICAO. Pursuant to the ICAO anti-fraud and anti-corruption policy, ICAO staff members shall promptly report any practice contrary, or reasonably suspected of being contrary, to the policy to the Ethics Officer. Furthermore, under the ICAO framework on ethics, staff members should report concerns relating to misconduct directly to the Ethics Officer.

55. If the offence committed results in the prosecution of an ICAO official or expert on mission, ICAO has the right and the duty, in accordance with article VI, section 22, of the Convention on the Privileges and Immunities of the Specialized Agencies, and paragraph 2 (iii) of annex III to the Convention, to waive the immunity of any official or expert in any case where in the opinion of ICAO such immunity would impede the course of justice and can be waived without prejudice to the interests of ICAO.

D. International Maritime Organization

56. The applicable laws, policies and procedures of IMO include: the Convention on the International Maritime Organization; the Convention on the Privileges and Immunities of the Specialized Agencies; the IMO Staff Regulations and Staff Rules, including appendix F, on the policy and procedures on the prevention and detection of fraud and serious misconduct;[24] the standards of conduct for the international civil service; the IMO Code of Ethics; the IMO harassment prevention initiative; and the IMO policy for protection against retaliation for reporting misconduct and for cooperating with duly authorized audits and investigations.

57. IMO has an Internal Oversight and Ethics Office, which has overall responsibility to assist the Secretary-General of IMO in fulfilling oversight responsibilities regarding IMO resources. Additionally, the Office deals with cases of protection against retaliation for reporting misconduct and for cooperation with duly authorized audits or investigations. The Office also conducts investigations in cases of alleged serious misconduct. The Office does not conduct criminal investigations, and appendix F to the IMO Staff Regulations and Staff Rules does not cover serious crimes or cases of sexual exploitation that would require prosecution at the national level.

58. For acts of misconduct on mission, IMO staff on mission fall under the IMO Staff Regulations and Staff Rules, specifically appendix F. Investigations into alleged misconduct are also conducted by the Internal Oversight and Ethics Office in such cases, and disciplinary actions can be imposed on staff on mission. Appendix F also applies to IMO experts on mission.

59. Acts of misconduct may also constitute crimes under the laws of the host States. In such instances, in addition to taking disciplinary action against its staff members, IMO may further request that the Member States prosecute the staff members and experts on mission concerned, waiving their privileges and immunities.

E. United Nations Industrial Development Organization

60. The applicable policies and procedures of UNIDO include: the Convention on the Privileges and Immunities of the Specialized Agencies; the agreement between UNIDO and the Government of Austria regarding the headquarters of UNIDO of 1995; the standards of conduct for the international civil service; the Staff Regulations of UNIDO (article I, duties, obligations and privileges; and article XI, disciplinary measures); the Staff Rules of UNIDO (rules 103.04 (d), 203.04 (b) and 303.05 (c)); Director General's bulletin UNIDO/DGB/(M).94/Rev.1, dated 21 February 2013, on

[24] Appendix F to the IMO Staff Regulations and Staff Rules is to a large extent consistent with the policies and procedures of the United Nations Secretariat in respect of serious misconduct.

the policy on fraud awareness and prevention; Director General's bulletin UNIDO/DGB/2017/10, dated 11 December 2017, on the Charter of the Office of Internal Oversight and Ethics of UNIDO; Director General's administrative instruction No. 19, dated 16 January 2012, on the Office's investigation guidelines; and the checklist for the referral of alleged criminal conduct to national authorities for investigation and possible prosecution.

61. UNIDO reported that allegations of criminal conduct on the part of its officials or experts on mission are rare and that the number of referrals to national authorities is likewise negligible, as is the number of notifications received from States concerning the investigation or prosecution of officials or experts on mission.

62. While UNIDO has not found it necessary to promulgate formal policies or procedures governing these matters, the practice of the Office of Legal Affairs of UNIDO with respect to referral to national authorities is well settled. Allegations of criminal conduct necessitating referral typically result from investigations by the Office of Internal Oversight and Ethics of UNIDO, which is mandated to investigate allegations of wrongdoing within the UNIDO secretariat. In the event that an investigative report recommends referral of a case to national authorities for possible prosecution, the Office of Legal Affairs is responsible for advising the Director General of UNIDO on whether the referral is appropriate and, if so, to which national authorities. The Office of Legal Affairs may also make a recommendation for referral in the absence of an internal investigation, if credible information is otherwise brought to its attention.

63. The Office of Legal Affairs of UNIDO has developed an informal checklist of questions and considerations to assist it in fulfilling its advisory function in relation to possible referrals. It should be noted that the referral of allegations of criminal conduct to national authorities is discretionary and not automatic. The final decision on whether to authorize a particular referral rests with the Director General of UNIDO as its chief administrative officer.

64. If an alleged crime is thought to have occurred at headquarters in Vienna, Austria, the referral is made to the authorities of the host State only, regardless of the nationality of the individual involved. Austrian criminal law is applicable within the headquarters of UNIDO, and Austrian criminal courts retain jurisdiction over crimes committed therein, provided that any issues of immunity are settled beforehand. If the official or expert on mission is not present in Austria, or if the alleged offence occurred outside of the territory of Austria, the referral may be made to the authorities of the State in which the offence occurred or to the authorities of the State of nationality of the individual, whichever the Office of Legal Affairs of UNIDO considers is closest from a jurisdictional perspective.

65. Referrals are made by the Office of Legal Affairs of UNIDO using the diplomatic channel; that is, by means of a note verbale from the Legal Adviser addressed to the ministry of foreign affairs or permanent mission of the State concerned. The investigative report and any relevant documentary evidence in the possession of the UNIDO secretariat are normally handed over at the same time. If necessary, the immunity of the official or expert is waived in the note verbale making the referral, thereby ensuring that such immunity is not an impediment to investigation and prosecution. Alternatively, the note verbale may confirm that no immunity is enjoyed in respect of the act in question. If the matter proceeds to trial, the Office of Legal Affairs may send a representative to court and facilitate the attendance of witnesses who are employed by UNIDO.

F. World Tourism Organization

66. UNWTO does not have specific procedures or policies with regard to credible allegations or the prosecution of crimes that may have been committed by its officials or experts on mission. The standard internal procedure for UNWTO officials refers to the UNWTO Staff Regulations and Staff Rules. Regulation 9 states that where privileges and immunities come into question, the official concerned shall immediately report to the Secretary-General of UNWTO, who will decide whether they shall be waived. With regard to experts on mission, UNWTO refers to a similar procedure covered in annex XVIII to the Convention on the Privileges and Immunities of the Specialized Agencies of 1947.

G. World Bank

67. The World Bank addresses allegations that a crime may have been committed by its staff members in accordance with its Staff Rules and, where appropriate, refers the matter to national authorities.

H. World Health Organization

68. All WHO staff have a responsibility to conduct themselves in accordance with the standards of conduct established for international civil servants, to comply with the WHO Staff Regulations and Staff Rules and to observe the principles of integrity, accountability, independence and impartiality, respect and professional commitment, as set out in the WHO Code of Ethics and Professional Conduct. The WHO fraud prevention policy and fraud awareness guidelines, which have been in place since 2005, complemented by the WHO policy on whistle-blowing and protection against retaliation of 2015, are applicable to all WHO staff members, irrespective of their level, function or location. Recently, WHO has developed a policy on sexual exploitation and abuse prevention and response, inspired by the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13). WHO has also formulated a policy on the acceptable use of information and communications systems.

69. WHO has an Office of Internal Oversight Services, which, inter alia, conducts investigations of alleged irregular activities (such as fraud, misconduct, harassment and retaliation). It reports annually to the Director General on its activities and on the status of implementation of recommendations, with a copy to the External Auditor.[25] WHO also has an Office of Compliance, Risk Management and Ethics, which, inter alia, provides advice on issues relating to ethics. WHO has an external integrity hotline, which facilitates the reporting of wrongdoing across WHO. This mechanism is an independent service not hosted by WHO which takes reports in confidence and, where warranted, anonymously.

70. If suspicions regarding wrongdoing that implies a significant risk to the interests, reputation, operations or governance of WHO arise,[26] individuals have the possibility of informing their supervisors through their normal supervisory line. When supervisors or managers receive a report of suspected wrongdoing, they ought to

[25] The report is also submitted to the World Health Assembly pursuant to paragraph 112.3 (e) of rule XII of the Financial Rules. It contains a summary of investigations of cases of misconduct and the outcome of any disciplinary proceedings. Cases of referral to national authorities, in particular criminal cases, would also be reported in the report submitted by the Office of Internal Oversight Services to the governing bodies of WHO.

[26] See WHO, "Code of Ethics and Professional Conduct", April 2017, para. 124.

address it fully and promptly by seeking the guidance of the Office of Compliance, Risk Management and Ethics or other specialized relevant mechanisms for ethics advice, or by reporting it to the Office of Internal Oversight Services, as applicable. Where a whistle-blower considers it prudent to bypass the normal supervisory line or where the normal communications channels are not available, the whistle-blower may contact the Director of the Office of Internal Oversight Services directly or make use of the Office's confidential mailbox. If after investigation the Office establishes that retaliation against the whistle-blower has occurred, the Director General or Regional Directors will decide on the appropriate remedy and disciplinary proceedings on the basis of the conclusions of the Office's investigation report.

71. The Director General has the overall authority for the detection and prevention of fraud, misappropriation or other inappropriate conduct (assisted by the Comptroller, the Director of the Human Resources Management Department, the Legal Counsel and the Director of the Office of Internal Oversight Services, who have a collective role to implement the fraud prevention policy). The Director General takes disciplinary proceedings in respect of any WHO staff member against whom, in the opinion of the Director General, there is sufficient evidence of fraud, misappropriation or other suspected acts of misconduct.

72. WHO may refer the matter to national authorities, depending on the gravity of the situation and the evidence available. WHO also collaborates with national authorities, including by waiving the immunity of the individual concerned when considered justified.

I. World Intellectual Property Organization

73. WIPO personnel are required to comply with rules promulgated by WIPO related to money-laundering, terrorist financing and so-called prohibited practices (namely, any form of corruption, fraud, collusion or coercion).[27] WIPO also promulgates internal office instructions to further elaborate the policies and procedures that WIPO staff must follow. The WIPO Staff Regulations and Rules explicitly provide that "staff members must comply with local laws and honour their private legal obligations" (regulation 1.12). The WIPO Financial Regulations and Rules affirm that officers involved in procurement must observe the terms of the WIPO Staff Regulations and Staff Rules and the standards of conduct for the international civil service. The WIPO Human Resources Management Department has begun to distribute information circulars to all staff describing disciplinary measures applied in WIPO.[28]

74. WIPO has a number of policies in place to uncover and collect information about possible violations of local law and the policies and rules of WIPO. WIPO staff members have an obligation to self-report involvement with the local criminal justice system to WIPO. Specifically, WIPO staff members must inform the Director General as soon as possible in the event that they are arrested or charged with an offence other than a minor traffic violation, are defendants in a criminal action or are convicted, fined or imprisoned for any offence other than a minor traffic violation.[29]

75. All WIPO personnel also have a general duty to "report that wrongdoing may have occurred, or any reasonable belief that such wrongdoing may have occurred".[30]

[27] WIPO, office instruction No. 13/2013, paras. 1 and 12.

[28] See, for example, WIPO information circular No. 8/2017, which describes disciplinary measures applied in WIPO during the 2016 calendar year.

[29] See WIPO, "Staff Regulations and Rules", rule 1.13.1 (c).

[30] See WIPO, office instruction No. 58/2012, para. 5. This duty is also reflected in paragraph 20 of the standards of conduct for the international civil service.

In the specific contexts of prohibited practices, money-laundering or terrorist financing, WIPO personnel have an obligation to report to the Internal Oversight Division.[31] The Director of the Internal Oversight Division is required to "maintain facilities for the submission of complaints by individual staff members as well as any other internal or external parties, concerning alleged misconduct".[32] WIPO staff members may also report allegations of misconduct and other wrongdoing to a hierarchical supervisor, the Office of the Director General or the Chair of the Coordination Committee.[33] WIPO has adopted a whistle-blower protection policy to protect individuals who make such reports against retaliation.[34]

76. The WIPO Internal Oversight Charter authorizes the Director of the Internal Oversight Division to conduct internal investigations regarding alleged misconduct and other wrongdoing.[35] Such investigations are governed by the Division's investigation policy and investigation manual. Investigations are part of the internal justice system of WIPO, which is based on the organization's internal regulations and rules, not on national laws.[36]

77. According to the investigation manual of the Internal Oversight Division, in cases where the investigation substantiates actions which may constitute crimes of a serious nature, the Director of the Division may recommend that the Director General refer the matter to the competent law enforcement authorities.[37] With respect to investigations that involve prohibited practices, money-laundering or terrorist financing, the relevant office instruction provides that the Director General may refer a matter or the results of the WIPO investigation to the appropriate national authorities for further investigation and/or criminal prosecution and may consider the lifting of immunity.[38]

J. World Meteorological Organization

78. Relevant policies and procedures of WMO include: the Financial Regulations (regulations 13.7–13.10); the Charter of the Internal Oversight Office, as well as the Office's investigation manual; the WMO Code of Ethics; and the policy for protection against retaliation.

79. The Internal Oversight Office is the principal channel for receiving allegations. It is responsible for investigating all allegations or presumptions of fraud, waste, mismanagement or misconduct and for conducting inspections of services and organizational units.

80. WMO staff members have an obligation to report suspected fraud and abuse to the Internal Oversight Office in accordance with the WMO Code of Ethics. Anyone with information regarding fraud against WMO-related activities or involving WMO staff is strongly encouraged to report this information through the direct communication line. When reporting to the direct communication line, individuals are encouraged to be as specific as possible with regard to the basic details of the respective incidents.

[31] See WIPO, office instruction No. 13/2013, para. 13.
[32] See WIPO, Internal Oversight Charter, para. 14.
[33] See WIPO, "Staff Regulations and Rules", regulation 1.7 (c).
[34] See WIPO, office instruction No. 58/2012. See also standards of conduct for the international civil service, para. 20.
[35] See WIPO, Internal Oversight Charter, paras. 7 and 25.
[36] See WIPO, document IOD/IP/2017/1, para. 11.
[37] See WIPO, document IOD/IM/2017/1, para. 174.
[38] See WIPO, office instruction No. 13/2013, para. 25.

K. International Atomic Energy Agency

81. The IAEA Staff Regulations and Staff Rules provide that staff members must observe the standards of conduct expected of an international civil servant. Failure to do so may result in disciplinary measures, in accordance with staff regulation 11.01 (see staff rule 1.05.1). Appendix G to the Staff Regulations and Staff Rules contains procedures to be followed in the event of reported misconduct.

82. When there is reason to believe that IAEA staff members have engaged in criminal misconduct, IAEA may take a number of internal actions, such as: (a) reminding the staff members of their obligations; (b) investigating the matter; (c) withholding salary in the case of third-party debts; and (d) initiating disciplinary measures in accordance with the IAEA Staff Regulations and Staff Rules. In 2018, IAEA appointed a new Chief Ethics Officer.

83. In accordance with the agreement between IAEA and Austria, the immunities of IAEA officials and experts on mission shall be waived by IAEA in cases where the immunity impedes the course of justice and where it can be waived without prejudice to the interests of IAEA.[39]

84. In terms of external action, when there is reason to believe that a crime may have been committed, IAEA may, depending on the case, (a) waive the immunity; (b) cooperate with the appropriate national authorities to facilitate the proper administration of justice by providing relevant information; or (c) answer to inquiries by national judicial authorities.

IV. Conclusions

85. The existing policies and procedures of the United Nations system as presented in the present report show that there is a great measure of coherence and coordination within the United Nations Secretariat, funds and programmes, as well as coordination with specialized agencies and related organizations, in ultimately bringing credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission to the attention of the States against whose nationals such allegations are made. Nonetheless, the Secretary-General will continue efforts within the system to further strengthen coordination and coherence.

86. In addition, the Secretary-General calls upon Member States to ensure that legislative bodies of the specialized agencies and related organizations address practical problems in the implementation of their policies and procedures relating to the reporting, investigation, referral and follow-up of credible allegations that reveal that a crime may have been committed by personnel in their agencies or organizations.

[39] IAEA, document INFCIRC/15, sects. 40 (a) and 43 (b).